

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201708798	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/11/2017 10:20 AM	Location of Incident: § 87(2)(b)	Precinct: 88	18 Mo. SOL 4/11/2019	EO SOL 4/11/2019	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/23/2017 11:00 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Anthony Giretti	4617	938568	WARRSEC
2. DT3 Joseph Russo	4054	939390	WARRSEC
3. DT3 Thomas Napolitano	3282	940682	WARRSEC
4. DT3 John Ross	1899	949580	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Joseph Rodriguez	2348	939342	DB FID
2. DT3 Richard Ortiz	1575	928905	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Anthony Giretti	Abuse: Detective Anthony Giretti entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.DT3 Joseph Russo	Abuse: Detective Joseph Russo entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.DT3 Thomas Napolitano	Abuse: Detective Thomas Napolitano entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.DT3 John Ross	Abuse: Detective John Ross entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E.DT3 Joseph Russo	Discourtesy: At § 87(2)(b) in Brooklyn, Detective Joseph Russo spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.DT3 Joseph Russo	Force: At § 87(2)(b) in Brooklyn, Detective Joseph Russo used physical force against § 87(2)(b)	§ 87(2)(b)
G.DT3 Anthony Giretti	Force: At § 87(2)(b) in Brooklyn, Detective Anthony Giretti used physical force against § 87(2)(b)	§ 87(2)(b)
H.DT3 Anthony Giretti	Abuse: At the 88th Precinct stationhouse, Detective Anthony Giretti refused to provide his name to § 87(2)(b)	§ 87(2)(b)

Case Summary

On October 12, 2017, Lt. Joseph Davids of the 88th Precinct filed this complaint with IAB by phone on behalf of a prisoner, § 87(2)(b). It was received at the CCRB on October 23, 2017.

On October 11, 2017, at 10:20 a.m., Det. Anthony Giretti, Det. Joseph Russo, Det. Thomas Napolitano, and Det. John Ross, all of Warrant Section, entered § 87(2)(b) in Brooklyn to apprehend § 87(2)(b) on a parole warrant (**Allegations A, B, C, and D: Abuse of Authority**, § 87(2)(g)). As § 87(2)(b) was escorted from the premises, Det. Russo allegedly told § 87(2)(b) “You better shut the fuck up,” and, “Shut the fuck up” (**Allegation E: Discourtesy**, § 87(2)(g)). Det. Giretti and Det. Russo both participated in bending § 87(2)(b) forward and pushing his arms, which were rear-handcuffed, far up into the air (**Allegations F and G: Force**, § 87(2)(g)). § 87(2)(b) was transported to the 88th Precinct stationhouse, where he asked Det. Giretti for his name, which Det. Giretti refused to provide (**Allegation H: Abuse of Authority**, § 87(2)(g)).

As a result of this incident, § 87(2)(b) was taken to § 87(2)(b), where he received treatment for a bone spur to his right elbow.

Video footage of this incident was obtained from NYCHA and can be viewed from Investigative Action #67.

Findings and Recommendations

Allegation (A) Abuse of Authority: Detective Anthony Giretti entered and searched § 87(2)(b), in Brooklyn.

Allegation (B) Abuse of Authority: Detective Joseph Russo entered and searched § 87(2)(b), in Brooklyn.

Allegation (C) Abuse of Authority: Detective Thomas Napolitano entered and searched § 87(2)(b), in Brooklyn.

Allegation (D) Abuse of Authority: Detective John Ross entered and searched § 87(2)(b), in Brooklyn.

§ 87(2)(g)

It is undisputed that Det. Giretti, Det. Russo, Det. Napolitano, and Det. Ross entered § 87(2)(b), in Brooklyn, though how exactly the entry was effected is disputed. § 87(2)(b) (BR 01) said that he was taking a shower when the officers arrived. § 87(2)(b)'s girlfriend, § 87(2)(b) approached and told him that police were at the door looking for him. In his CCRB interview, § 87(2)(b) initially said that he told § 87(2)(b) to let the officers in; § 87(2)(b) then subsequently revised his statement, and said he only told § 87(2)(b) to go ask the officers what was going on. § 87(2)(b) then went to the bedroom of the apartment and dressed himself. § 87(2)(b) did not go to the front door of the apartment and neither saw nor heard how officers entered. Officers came to the bedroom, told § 87(2)(b) that he had a warrant, and handcuffed him. § 87(2)(b) told the officers that he did not think he was actually wanted. The officers told him he would need to see a judge about it regardless. § 87(2)(b) did not resist being handcuffed.

In her telephone statement (BR 02), § 87(2)(b) said that she heard a knock on the front door of her apartment. § 87(2)(b) is not on the lease, but stays there occasionally. § 87(2)(b) was in the shower. § 87(2)(b) went to the front door and saw four officers standing outside. One of the officers, identified by the investigation as Det. Giretti, told § 87(2)(b) that they were from

Warrant Squad and that they had a warrant for § 87(2)(b) for violating his parole. Det. Giretti then asked § 87(2)(b) if § 87(2)(b) was present. § 87(2)(b) replied, "Yes." Det. Giretti then placed his foot against the open door and told § 87(2)(b) that they had to come in to look for § 87(2)(b). § 87(2)(b) did not protest their entry. Once the officers were inside, they went to her bedroom and located § 87(2)(b) who they handcuffed (in her IAB statement (BR 35), § 87(2)(b) said that officers lifted her mattress and found § 87(2)(b) hiding under the bed, but said they otherwise did not look anywhere in the apartment).

§ 87(2)(b) was uncooperative with efforts to obtain a sworn statement (BR 03).

There were no other civilian witnesses to this encounter. Video footage obtained from NYCHA shows only the elevator and lobby of the location, and thus does not capture officers' entry into apartment 8C (BR 04).

Det. Giretti (BR 05) said that on October 11, 2017, at approximately 10 a.m., he received a call from an officer at Manhattan Warrant Squad, who called him and requested that he execute a parole warrant at § 87(2)(b), in Brooklyn. Det. Giretti did not remember which officer called to make this request. Det. Giretti was provided with § 87(2)(b)'s name, date of birth, and NYSID number. Using this information, Det. Giretti conducted a query of the NYPD database on his department-issued cell phone. Det. Giretti confirmed that § 87(2)(b) had an active parole warrant, as well as an active probable cause i-card, both of which listed § 87(2)(b), in Brooklyn, as § 87(2)(b)'s address. The i-card was linked to a UF-61 which noted that § 87(2)(b) had assaulted the son of § 87(2)(b) identified by the investigation as § 87(2)(b) § 87(2)(b) who also resided at § 87(2)(b). The search indicated that § 87(2)(b) had been living at § 87(2)(b), for approximately 12 to 18 months prior to this incident, and that he had several domestic incident reports from that location. The search also returned a photograph of § 87(2)(b).

Det. Giretti went to the location with Det. Russo, Det. Napolitano, and Det. Ross. Det. Giretti knocked on the apartment door. A female voice, identified as § 87(2)(b) asked who it was. Det. Giretti said it was the police and asked § 87(2)(b) to open the door. § 87(2)(b) complied. Det. Giretti told § 87(2)(b) that they were from the Warrant Squad and that they were looking for § 87(2)(b) in connection with an active parole warrant. § 87(2)(b) smiled or smirked and gestured with her hand towards the rear of her apartment. Det. Giretti asked, "What does this mean?" § 87(2)(b) said that § 87(2)(b) was in a bedroom at the back of the apartment, and asked Det. Giretti not to enter a second bedroom on the right side of the hall, as her son was sleeping there. Det. Giretti then entered the apartment. Det. Giretti never placed his foot in the door to prevent § 87(2)(b) from closing it. § 87(2)(b) never protested the entry or asked officers to leave.

Det. Giretti went to the bedroom, but did not see § 87(2)(b). Det. Giretti checked the closet to see if § 87(2)(b) was hiding there. Det. Giretti then checked under the bed and saw that § 87(2)(b) was hiding under it. Det. Giretti ordered § 87(2)(b) to come out, which he did. Det. Giretti did not remember if he lifted the mattress or not. § 87(2)(b) was covered only by a towel. The officers allowed him to dress, then handcuffed him and escorted him from the bedroom. § 87(2)(b) requested to go back to the bedroom to get something. Due to safety concerns, the officers did not allow § 87(2)(b) to do so.

Det. Russo (BR 06), Det. Napolitano (BR 07), and Det. Ross (BR 08) provided statements that were generally consistent with Det. Giretti, with the following exceptions and additions.

Det. Russo (BR 06) added that when the Manhattan Warrant Squad officer called Det. Giretti, they explained that they had received a tip that § 87(2)(b) was at the location, and were afraid that by the time they arrived from Manhattan, § 87(2)(b) would be gone. Det. Russo could not identify this officer. Det. Russo did not know what searches were performed and did not know if § 87(2)(b) resided at the location. Det. Russo could not recall what exact conversation Det. Giretti had with § 87(2)(b) at the front door, but recalled that she smiled, motioned with her hand towards the rear of her apartment, and allowed Det. Giretti to enter. While Det. Russo did not remember if explicit verbal consent was requested or provided, § 87(2)(b) seemed very cooperative, and at no point protested their entry in any fashion. Det. Giretti did not place his foot in the door to stop § 87(2)(b) from closing it.

The officers went to the bedroom of the location. Det. Giretti lifted the bed's frame and asked § 87(2)(b) to come out from beneath it, which he did. § 87(2)(b) then dressed and was handcuffed.

Det. Napolitano (BR 07) confirmed that § 87(2)(b) smiled at the detectives, nodded yes when Det. Giretti asked if § 87(2)(b) was in the apartment, then gestured with her hand to indicate that officers could enter. Det. Napolitano never saw Det. Giretti place his foot in the door to stop her from closing it, and never heard § 87(2)(b) in any way protest the entry. Det. Napolitano stayed in the hallway of the apartment and did not enter the bedroom, but heard officers telling § 87(2)(b) to get out from beneath the bed.

Det. Ross (BR 08) could not recall what exact conversation Det. Giretti had with § 87(2)(b). § 87(2)(b) spoke in a low voice to Det. Giretti, then nodded with her head, as though indicating that she understood what Det. Giretti was saying. § 87(2)(b) then pointed to the rear of her apartment and stepped to the side, allowing officers to enter. Det. Ross never saw Det. Giretti place his foot in the door and never heard § 87(2)(b) protest the entry.

Det. Ross and Det. Giretti entered the bedroom. Det. Ross looked under the bed and saw § 87(2)(b) hiding beneath it. § 87(2)(b) was wearing only a towel. § 87(2)(b) refused to get out from beneath the bed, so Det. Ross and Det. Giretti both lifted the bed frame. § 87(2)(b) at that point complied. The officers placed one handcuff around one of § 87(2)(b)'s wrists and escorted him to the living room, where § 87(2)(b) helped get § 87(2)(b) dressed. Officers then fully handcuffed him and left the apartment.

The TRI (BR 09) and command log (BR 10) confirm that § 87(2)(b) had an open parole warrant. A copy of the parole warrant (BR 12) was provided by IAB, but it does not specify § 87(2)(b)'s address or any possible whereabouts. § 87(2)(b)'s DAS snapshot (BR 13) lists his last known address as § 87(2)(b) in the Bronx. It lists two domestic incident reports at § 87(2)(b), in Brooklyn, in 2015 and 2016. It confirms that he had an i-card with probable cause to arrest as of February 4, 2017, but the address on this i-card is not specified on the DAS snapshot. It lists a parole warrant active as of June 29, 2017, but also does not specify an address. A copy of this i-card (BR 31) was provided by IAB, and it lists § 87(2)(b)'s last known address as § 87(2)(b), as of February 4, 2017. This i-card was generated by Det. Joseph Rodriguez of the 88th Precinct Detective Squad. On March 11, 2017, Det. Rodriguez generated a wanted flyer (BR 32) for § 87(2)(b) but it does not list his address. § 87(2)(b)'s arrest report (BR 11) stemming from this incident also lists his address as § 87(2)(b) and indicates that besides an active parole warrant, § 87(2)(b) was arrested for assault in the second degree stemming from a criminal complaint (UF-61) filed against him on February 4, 2017. A copy of this UF-61 (BR 33) was provided to IAB and it indicates that a victim, § 87(2)(b) was struck by an unknown male with a stick while § 87(2)(b) was in his bedroom at § 87(2)(b).

§ 87(2)(b). § 87(2)(b) refused to provide the male's name, but said that the male was his "other relative." The report does not list § 87(2)(b) as the suspect, nor does it list the suspect's address.

A parole warrant is the functional equivalent of an arrest warrant for the purpose of having probable cause to apprehend an individual. People v. Diaz, 618 N.Y.S.2d 1000 (1994) (BR 14) An arrest warrant founded on probable cause implicitly carries with it limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Without a search warrant, an officer may only permissibly enter the dwelling of a third party in order to execute an arrest warrant either with the consent of an authorized party or under exigent circumstances. Payton v. New York, 445 U.S. 573 (1993) (BR 15) While there is no specific formula for what constitutes proper information for forming the reasonable belief that a suspect resides at a particular location, it is generally held that such information must be the result of basic inquiries, and should be of a relatively recent vintage. In People v. Cabral, 147 Misc. 2d 1000 (1990) (BR 16), the court held that officers could not rely on information contained in an arrest warrant that listed an address based on information the defendant provided six months earlier. Officers are entitled to rely on information received from a fellow officer, as this information is presumed to be reliable and accurate. People v. Powell, 101 A.D.3d 756 (2012) (BR 17)

§ 87(2)(g)
§ 87(2)(g)
Det. Giretti said he received a request from an unknown member of service to locate § 87(2)(b) at § 87(2)(b) § 87(2)(g).
§ 87(2)(g)
§ 87(2)(b). Furthermore, Det. Giretti did not indicate that this officer communicated to him that § 87(2)(b) lived at the location, only that he was there at the time of their phone call.

Though Det. Giretti said the results of his subsequent search on his department cell phone further lead him to believe § 87(2)(b) resided at the location, he acknowledged that he performed only cursory checks as he did not have sufficient time to do a more thorough search before responding to the location. Det. Giretti noted that there were several domestic incident reports within the past year stemming from the location, but the i-card and UF-61 indicate that there was only one such incident, which occurred on February 4, 2017. The DAS snapshot confirms that § 87(2)(b) had an open i-card and open parole warrant at the time of this incident, but the i-card was roughly 8 months old and the parole warrant was roughly four months old. A copy of the parole warrant obtained through IAB does not list any address for § 87(2)(b) though the i-card lists it as § 87(2)(b).

§ 87(2)(g)
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§ 87(2)(g)
[REDACTED]

Allegation (E) Discourtesy: At § 87(2)(b) in Brooklyn, Detective Joseph Russo spoke discourteously to § 87(2)(b)

§ 87(2)(b) (BR 01) said that in the eighth floor hallway, Det. Russo told § 87(2)(b) “You better shut the fuck up.” (In his initial interview with IAB, § 87(2)(b) reported Det. Russo’s phrasing as, “Shut the fuck up, you motherfucker.”) When Det. Ross told Det. Russo to take it easy, Det. Russo said, “I do not give a fuck.” Once § 87(2)(b) was in the elevator, Det. Russo again told him, “Shut the fuck up.” (In his initial interview with IAB, § 87(2)(b) instead claimed that both Det. Giretti and Det. Russo told him, “Shut the fuck up,” once he was seated in the police van). § 87(2)(b) said that Det. Napolitano had gone downstairs ahead of the other officers and was not present to witness the profanity.

§ 87(2)(b) (BR 02) remained in her apartment after § 87(2)(b) was removed from it. § 87(2)(b) was complaining that he had been handcuffed too tightly. § 87(2)(b) heard an officer – she could not tell which – say, “Shut up,” to § 87(2)(b). § 87(2)(b) did not hear any officers use profanity towards § 87(2)(b). Once § 87(2)(b) was in the elevator, § 87(2)(b) could no longer hear what occurred.

Video footage from the elevator lacks an audio component and thus does not depict the allegation. There is no video footage from the 8th floor hallway.

Det. Russo (BR 06) denied hearing § 87(2)(b) complain that his handcuffs were too tight on scene. Det. Russo denied saying, “You better shut the fuck up,” “I do not give a fuck,” or, “Shut the fuck up,” during this incident. Det. Russo did not use any profanity towards § 87(2)(b).

§ 87(2)(b) Det. Giretti (BR 05) was consistent with Det. Russo. Det. Giretti never heard § 87(2)(b) complain that his handcuffs were too tight, nor did he hear Det. Russo use profanity.

Det. Ross (BR 08) said that § 87(2)(b) did not complain that his handcuffs were too tight until he was in the elevator. Det. Ross never heard Det. Russo use any profanity towards § 87(2)(b).

Det. Napolitano (BR 07) confirmed that he went downstairs ahead of § 87(2)(b) and his fellow officers, as § 87(2)(b) was not being cooperative and he thought he might need to retrieve leg shackles from their vehicle. Det. Napolitano did not hear § 87(2)(b) complain that his handcuffs were too tight, nor did he hear Det. Russo use profanity towards him.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (F) Force: At § 87(2)(b) in Brooklyn, Detective Joseph Russo used physical force against § 87(2)(b)

Allegation (G) Force: At § 87(2)(b) in Brooklyn, Detective Anthony Giretti used physical force against § 87(2)(b)

It is undisputed that Det. Giretti and Det. Russo used physical force against § 87(2)(b) § 87(2)(g)

§ 87(2)(b) (BR 01) said that officers found him in the bedroom. § 87(2)(b) said he was completely compliant with being handcuffed, but felt that he had been handcuffed too tightly, and asked the officers to loosen them. Det. Ross told § 87(2)(b) he should be patient and wait until they were in the hallway. Once in the hallway, § 87(2)(b) repeated his request that the handcuffs be loosened, at which time Det. Ross told him to wait until they got downstairs. Det. Russo then grabbed § 87(2)(b) by the front of his shirt and attempted to throw him over his shoulder, possibly in an effort to pull him to the ground. § 87(2)(b) was unable to describe this action in further detail (in his IAB statement (BR 29), § 87(2)(b) said that Det. Russo slammed him against the wall). § 87(2)(b) kept his balance and did not fall. § 87(2)(b) yelled, “What are you doing? I am cuffed from behind. I am not a threat to anybody.”

Once the elevator doors opened, the officers walked § 87(2)(b) inside. Immediately upon entering the elevator, Det. Russo pushed § 87(2)(b)'s head down so that § 87(2)(b) was bent forward at the waist with the top of his head facing the right corner of the elevator. Det. Russo held § 87(2)(b)'s head in place by pressing his knee against the back of his head. Meanwhile, Det. Giretti pulled § 87(2)(b)'s arms far up behind him. The officers held § 87(2)(b) in this fashion until they reached the ground floor. § 87(2)(b) denied resisting the officers in any fashion at any time during this incident. While he was bent forward, § 87(2)(b) felt a sharp pain to his shoulder, but did not believe he was injured until he was later examined at the hospital. § 87(2)(b) denied that he had any preexisting injuries at the time of this incident.

§ 87(2)(b) complained of pain to his shoulder at the 88th Precinct stationhouse, and was transported to § 87(2)(b) I. At the hospital, an x-ray was performed. § 87(2)(b) said a doctor informed him that he had a “cracked bone” underneath his right elbow and a torn ligament in his right bicep. § 87(2)(b)'s right arm was placed in a cast and he was then released.

§ 87(2)(b)'s medical records, a copy of which was provided by IAB (BR 34), note that § 87(2)(b) complained to medical personnel at § 87(2)(b) of pain to his right forearm and a tingling numbness to his extremities after an encounter with police earlier that day. § 87(2)(b) reported mild bruising and numbness to his wrist and fingers. § 87(2)(b) believed the numbness to his arm was sustained while being handcuffed in an awkward position. § 87(2)(b) denied having prior injuries. § 87(2)(b) was able to flex his arm and fingers and had a full range of motion.

An x-ray revealed an olecranon spur, or bone spur on his right elbow, with a subtle linear lucency, or an area that lets x-rays through tissue and appears darker on the x-ray image, through it. Medical records noted that this could represent a nondisplaced fracture through the spur (BR 30), but that further follow up was needed.

This is also confirmed by the Medical Treatment of Prisoner Form (BR 19). The IAB case file included images taken of § 87(2)(b)'s right arm in a cast with a sling (BR 20).

§ 87(2)(b) (BR 02) said that once officers entered the bedroom, they handcuffed § 87(2)(b). § 87(2)(b) was compliant, but complained that the handcuffs were too tight. After he was handcuffed, § 87(2)(b) helped get him dressed, and the officers brought him into the hall.

§ 87(2)(b) did not see officers use physical force against § 87(2)(b) in the hall. § 87(2)(b) saw officers push § 87(2)(b) into the elevator, but did not see what happened once they were inside.

As was previously discussed, § 87(2)(b) did not provide a sworn statement to the CCRB. § 87(2)(b)'s interview with IAB (BR 35) was more or less consistent with her CCRB statement, though she added that § 87(2)(b) initially hid under the bed and refused to get out, so that officers had to lift the mattress; that § 87(2)(b) was giving the officers a "hard time," by which she meant he was cursing at the officers, though he never actively resisted; and that the officers held § 87(2)(b) against the wall of the hallway while they waited for the elevator. § 87(2)(b) did not see what happened inside the elevator, but did look out her window to see officers escorting § 87(2)(b) to a police van in a rough manner by pushing him.

Video footage obtained from NYCHA (BR 04) does not depict what occurred in the 8th floor hallway before officers entered the elevator. It is in color and lacks audio.



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At 00:04 seconds, officers lead § 87(2)(b) into the elevator. § 87(2)(b) is bent forward at the waist. § 87(2)(b) appears to be rear handcuffed. § 87(2)(b)'s arms are pulled far up behind him. An officer, identified by the investigation as Det. Russo, is reaching in between § 87(2)(b)'s arms to press down on § 87(2)(b)'s upper back, near his left shoulder. A second officer, identified as Det. Giretti, is holding § 87(2)(b)'s right arm by his wrist. A third officer, identified by the investigation as Det. Ross, enters the elevator behind § 87(2)(b). Det. Giretti, and Det. Russo. Det. Ross does not appear to be making contact with § 87(2)(b).

By 00:06 seconds, Det. Giretti and Det. Russo have turned § 87(2)(b) inside the elevator. By 00:10 seconds, they have rotated him further, so that his head is pressed into the front right corner of the elevator. Det. Giretti holds both of § 87(2)(b)'s wrists far up behind his back. Due to the positioning, it is not possible to tell how Det. Russo makes contact with § 87(2)(b) during this time, though he is positioned roughly around § 87(2)(b)'s left shoulder. At 00:11 seconds, an unidentified female individual, possibly § 87(2)(b) is visible in the hallway outside the elevator. At 00:13 seconds, the elevator doors close. At 00:19 seconds, Det. Ross appears to reach in between Det. Giretti and Det. Russo to place his hand on § 87(2)(b)'s left lower back. § 87(2)(b) is mostly still, except at 00:29 seconds, when he begins to stand fully upright, at which point both Det. Russo and Det. Giretti appear to push him down again.

At 1:01 minutes, Det. Giretti places his right hand against the front elevator wall; his right arm is hooked behind § 87(2)(b)'s left, so that the crook of Det. Giretti's elbow is against § 87(2)(b)'s bicep. At 1:19 minutes, Det. Russo unloops his right arm from § 87(2)(b)'s, leaving Det. Giretti to hold both of § 87(2)(b)'s hands up in the air. At 1:26 minutes, § 87(2)(b) stands upright and pulls his arms forward in front of him. It is unclear if Det. Giretti controls this movement or not. § 87(2)(b) is positioned so that his front is against the right elevator wall. § 87(2)(b) rests his right hand against the right elevator wall, his left hand pulled behind his back by the handcuffs. Det. Giretti shifts his grip from § 87(2)(b)'s hands to his right elbow. At 1:29 minutes, § 87(2)(b)'s mouth is moving as though he is speaking, and he continues to speak for the remainder of the recording. At 1:29 minutes, Det. Ross moves around behind Det. Giretti to grip § 87(2)(b)'s right arm at its bicep. Det. Giretti reaches over Det. Russo to grip § 87(2)(b)'s right elbow from behind before letting go at 1:32 minutes. Det. Giretti then shifts his left hand to place it against § 87(2)(b)'s right shoulder. At 1:46 minutes, the elevator doors open, and the officers apparently reach the ground floor. Det. Giretti hooks his

arms around § 87(2)(b)'s left elbow, while Det. Ross does the same with his right. They turn him to face the open elevator door. At 1:49 minutes, § 87(2)(b)'s back is to the camera, but his head is turned towards Det. Russo. As his face is not visible to the camera, it is unclear if he is speaking. Between 1:49 and 1:59 minutes, Det. Giretti gestures towards the open door and appears to speak to § 87(2)(b). At 2:07 minutes, § 87(2)(b) is eventually escorted from the elevator.

Video footage also depicts the lobby and the front walkway of the NYCHA building, which both show officers walking § 87(2)(b) away from the building. The officers do not appear to push § 87(2)(b) or otherwise be rough with him.

Det. Giretti (BR 05) said that after § 87(2)(b) was dressed and handcuffed, he asked to be brought back to the bedroom of the apartment to get an unspecified item. Due to safety concerns, Det. Giretti did not allow him to do so. This upset § 87(2)(b) who began to curse and yell at the officers, though Det. Giretti did not remember anything specific he said. Det. Giretti did not remember if § 87(2)(b) spat, whether deliberately or incidentally to his yelling. As the officers escorted § 87(2)(b) to the elevator, he grew only more irate, yelling louder and continuing to curse. § 87(2)(b) attempted to pull away from Det. Ross, who at that time was holding § 87(2)(b) by his arm. Det. Giretti and Det. Russo immediately gripped § 87(2)(b) by his arms, grabbed § 87(2)(b) near his handcuffs, and lifted his hands up behind him to prevent him from moving, escaping, or injuring the detectives. This is a common cuff restraining technique used to restrain aggressive subjects. Det. Giretti did not remember if § 87(2)(b) was issued commands to stop moving. Det. Giretti did not remember if § 87(2)(b) bumped an officer with his chest, or threatened an officer.

Det. Giretti did not remember if they held § 87(2)(b) against a wall in the hallway, though he noted they could have done so if § 87(2)(b) was aggressive towards them. Det. Giretti denied that Det. Russo grabbed § 87(2)(b) by his shirt or attempted to throw him over his shoulder, nor did he do so himself. While in the hallway, § 87(2)(b) exited her apartment and told § 87(2)(b) to calm down and stop yelling.

Once the elevator arrived, the officers entered and placed themselves to the right side of the elevator door. § 87(2)(b) continued to yell. Det. Giretti again lifted § 87(2)(b)'s hands up behind his head to prevent him from moving or injuring the detectives. Det. Giretti denied that he ever pressed his knee against § 87(2)(b) or that he intentionally lowered § 87(2)(b)'s head down, noting that it is natural to keep the head down when the arms are bent that far behind the back. Det. Giretti denied Det. Russo pressing his knee against § 87(2)(b)'s head or intentionally lowering his head down. While in such position, § 87(2)(b) tried to move, but there was not sufficient space in the elevator to allow him to do so. § 87(2)(b) never complained that he was in pain. The officers released § 87(2)(b) from this hold once they reached the ground floor.

The TRI that Det. Giretti prepared is generally consistent with his CCRB testimony (BR 09 and BR 27).

Det. Russo (BR 06) provided a statement that was generally consistent with that of Det. Giretti, with the following exceptions and additions.

Det. Russo (BR 06) confirmed that § 87(2)(b) became upset when he was not allowed to retrieve something he wanted from the bedroom. § 87(2)(b) became agitated, yelling, "Suck my dick," "Suck my black dick," and calling officers "faggots." § 87(2)(b) did not physically resist. § 87(2)(b)'s agitation increased as officers escorted him to the elevators. Saliva was unintentionally coming from his mouth as he yelled in the direction of Det. Giretti and Det. Russo. As a protective measure, Det. Russo and Det. Giretti placed § 87(2)(b) front first against

the wall to the left side of the elevator. § 87(2)(b) arrived and tried to calm § 87(2)(b) down. Det. Russo denied grabbing § 87(2)(b) by his shirt or attempting to throw him over his shoulder, nor did he see Det. Giretti do so.

Once the elevator arrived, Det. Russo and Det. Giretti lifted § 87(2)(b)'s hands far up behind his back. Det. Giretti pressed down on § 87(2)(b)'s upper back or the back of his head to bend him forward. This is a commonly used compliance technique. Det. Russo and Det. Giretti used it in this case to prevent § 87(2)(b)'s spit from getting on them and to limit § 87(2)(b)'s ability to physically resist. § 87(2)(b) made no movements, but continued to yell. The officers held § 87(2)(b) in this fashion until they reached the lobby. § 87(2)(b) at no point complained of pain, or that his handcuffs were too tight. Det. Russo denied pressing his knee against § 87(2)(b)'s head.

Det. Ross (BR 08) confirmed that § 87(2)(b) grew agitated and aggressive once officers refused to let him back into the bedroom, yelling, "Fuck you, white boy," "Suck my dick," "Go fuck yourself," and, "This is bullshit. I am not wanted. Go and fuck off." § 87(2)(b) was unintentionally spitting at officers as he yelled. § 87(2)(b) grew more agitated once he was removed to the hallway, yelling at Det. Russo, "White boy, I should have shot you when I had a chance. I should have put a bullet in your head." Det. Ross did not know why § 87(2)(b) directed this comment to Det. Russo. Due to § 87(2)(b)'s agitation, the officers placed § 87(2)(b) front first against the wall next to the elevator. § 87(2)(b) stood in the hallway during this time, but did not approach or in any way interact with § 87(2)(b).

Once the elevator arrived, the officers walked inside and placed § 87(2)(b) against the right side of the elevator wall. Det. Giretti held § 87(2)(b) with his hands lifted far behind § 87(2)(b)'s back to prevent him from spitting on officers or physically resisting. § 87(2)(b) began complaining at this time that his handcuffs were too tight.

Det. Napolitano (BR 07) said that he hung back in the hallway of the apartment upon entry and did not go into the bedroom. Det. Napolitano heard officers telling § 87(2)(b) to get out from beneath the bed. Det. Napolitano then heard officers ordering § 87(2)(b) to place his hands behind his back. Det. Napolitano at this time looked in the bedroom and saw § 87(2)(b). § 87(2)(b) was naked except for a towel wrapped around his waist. Det. Giretti, Det. Russo, and Det. Ross surrounded him. § 87(2)(b) was cursing at the officers, refusing to place his hands behind his back, and appeared standoffish in that his arms were stiff and held close to his body. After two or three requests, § 87(2)(b) complied with being handcuffed. § 87(2)(b) was removed to the hallway of the apartment, where § 87(2)(b) helped him get dressed. § 87(2)(b) asked to be released from his handcuffs to go back to the bedroom to get something, though he did not specify what. Officers did not allow him to do so.

Det. Napolitano went downstairs ahead of the other officers and did not see what happened in the hallway outside the apartment or in the elevator.

Officers may only use a reasonable level of force necessary to gain control or custody of a subject. Officers shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault. Patrol Guide Section 221-01(BR 21)

§ 87(2)(g)

[illegible]

§ 87(2)(b) (BR 01) said that upon arrival to the 88th Precinct stationhouse with Det. Giretti and Det. Russo, Det. Russo escorted him upstairs to the Detective Squad to meet with Det. Rodriguez, the officer who had issued the i-card for him. Det. Russo remained downstairs near the front desk. Upon arrival on the second floor, § 87(2)(b) met with an officer who he assumed to be Det. Rodriguez. In Det. Rodriguez's presence, § 87(2)(b) asked Det. Giretti for his name. Det. Giretti said, "No," and went back downstairs.

Det. Russo (BR 06) said that after this incident his team split up, with Det. Ross and Det. Giretti delivering § 87(2)(b) to the 88th Precinct stationhouse and Det. Russo, Det. Napolitano, and a third officer who had been waiting in the van downstairs while § 87(2)(b) was apprehended, going to the 84th Precinct stationhouse to deliver another prisoner who had been apprehended earlier that morning. Det. Russo did not know what happened to § 87(2)(b) at the 88th Precinct stationhouse.

Det. Ross (BR 08) was generally consistent with Det. Giretti, except he added that once they arrived at the stationhouse and brought § 87(2)(b) to the detective squad, § 87(2)(b) was so upset that the detectives asked officers to bring him back to the holding cell until he calmed

down. Det. Ross did not know which detective or detectives they spoke with. Det. Ross did not hear § 87(2)(b) ask for Det. Giretti's name and never heard Det. Giretti refuse to provide it.

Det. Rodriguez (BR 25) said he was out in the field when he received a call informing him that § 87(2)(b) had been apprehended. Det. Rodriguez arrived back to the 88th Precinct stationhouse at approximately 1 p.m., at which time the desk officer informed him that § 87(2)(b) had been removed to the hospital. Det. Rodriguez went upstairs to the detective squad. At some time between 6 p.m. and 8 p.m., § 87(2)(b) was returned to the stationhouse. Det. Rodriguez met him by the fingerprinting area and fingerprinted him. Det. Rodriguez did not know who from Warrant Squad apprehended § 87(2)(b) or who transported him from the hospital. Det. Rodriguez never heard § 87(2)(b) ask for the name of an officer from Warrant Squad, and never heard any member of Warrant Squad refuse to provide his name.

The 88th Precinct command log (BR 10) notes that § 87(2)(b) arrived to the stationhouse at 11 a.m. It notes only that he was brought in by Det. Giretti. At approximately 12:20 p.m., § 87(2)(b) was removed to § 87(2)(b) via EMS. § 87(2)(b)'s presence in the holding cells is not documented in the holding pen roster until 7:30 p.m. (BR 22), upon his return from the hospital.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 24).
- Det. Anthony Giretti has been a member of service for 12 years and has one CCRB allegation against him. § 87(2)(g)
- Det. Joseph Russo has been a member of service for 12 years and has a total of 12 prior CCRB allegations stemming from nine separate complaints. § 87(2)(g)
- Det. John Ross has been a member of service for seven years and has a total of four prior CCRB allegations stemming from two separate complaints. § 87(2)(g)
- Det. Thomas Napolitano has been a member of service for 11 years and has a total of 27 prior CCRB allegations stemming from 14 separate complaints that were made against him.
 - In case 201010420, an allegation of force was substantiated. The Board recommended charges. Det. Napolitano was found not guilty at trial.
 - In case 201609591, an allegation of entry and search was substantiated. The Board recommended Command Level 1 Instructions. The NYPD disposition is currently pending.
 - In case 201701615, allegations of gun pointed, entry, and search were closed as substantiated. The Board recommended Command A Discipline. The NYPD disposition is currently pending.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation as § 87(2)(b) is incarcerated.
- As of January 10, 2018, no Notice of Claim has been filed with respect to this incident (BR 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad: 4

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date